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PATENT

Attorney Docket No. 10850.0001-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No. 7,571,132 )  
)  
Inventor: Tara Kimbrell COLE ) Group Art Unit: 5334  
)  
Issued: August 4, 2009 ) Examiner: Samuel Weis  
)  
For: FORFAITING TRANSACTIONS ) Confirmation No.: 5334

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT**

In accordance with 37 C.F.R. § 1.705(d), Applicant respectfully requests reconsideration of the patent term adjustment of the above-identified patent. This application is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d), and includes a statement of facts pursuant to 37 C.F.R. § 1.705(b)(1).

**I. STATEMENT OF FACTS INVOLVED**

**A. Correct Patent Term Adjustment**

According to information printed on the face of the above-identified issued patent, this patent is entitled to 1594 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 2266 days based on the following facts:

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The application was filed January 18, 2002. A Restriction Requirement was mailed April 6, 2007, resulting in a U.S. Patent and Trademark Office ("PTO") delay of 1480 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A)(i).

On April 30, 2007, Applicant filed a response to the Restriction Requirement mailed April 6, 2007.

On May 23, 2007, a non-final Office Action was mailed.

On August 10, 2007, Applicant filed a response to the Office Action mailed May 23, 2007.

On November 1, 2007, a non-final Office Action was mailed.

On December 28, 2007, Applicant filed a response to the Office Action mailed November 1, 2007.

On December 31, 2007, Applicant filed a supplemental response to the Office Action mailed November 1, 2007, resulting in Applicant's delay of 3 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(C)(ii).

On April 2, 2008, a non-final Office Action was mailed.

On September 2, 2008, Applicant filed a response to the Office Action mailed April 2, 2008, resulting in Applicant's delay of 62 days beyond the 3 months provided by 35 U.S.C. § 154(b)(2)(C)(ii).

On October 7, 2008, a Notice of Allowance was mailed.

On January 6, 2009, Applicant paid the Issue Fee.

On August 4, 2009, the patent issued, resulting in a PTO delay of 90 days beyond the 4 months provided by 35 U.S.C. § 154(b)(1)(A)(iv).

Under *Wyeth v. Dudas*, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) begins to toll three years after filing date of the application. Thus, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) began to toll on January 18, 2005, and ended with the patent being issued on August 4, 2009, resulting in 1659 days of PTO delay under the three-year pendency rule. However, 898 (808 + 90 = 898 days) of the days exceeding the three-year pendency date overlap with the earlier 1570 days of USPTO delay (1480 + 90 = 1570 days; see page 2). Thus, the PTO delay under the three-year pendency rule is 761 days (1659 - 898 = 761 days).

*Wyeth v. Dudas* instructs that the PTO delay of 761 days under the 3-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B)) should be counted in addition to the 1570 days of PTO delay and offset by 65 days of Applicant's delay (62 + 3 = 65 days; see page 2). Thus, the total PTO adjustment is 2266 days (761 + 1570 - 65 = 2266 days). Applicant respectfully request that the current patent term adjustment be reconsidered.

#### **B. Terminal Disclaimer**

The above-identified application is not subject to a Terminal Disclaimer.

#### **C. Reasonable Efforts**

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

### **II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to Deposit

Account 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 2, 2009

By: 

C. Gregory Gramenopoulos  
Reg. No. 36,532